

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EUGENE CASTELLE, :

21 Civ. 4694 (AKH)

Movant, :

18 Cr. 15-10 (AKH)

-against- :

**DECLARATION OF
GERALD J. McMAHON**

UNITED STATES OF AMERICA, :

Respondent. :

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GERALD J. McMAHON, pursuant to Title 28, United States Code, § 1746,
hereby declares under penalty of perjury:

1. I am an attorney duly admitted to the practice of law in the State of New York and
to the Bar of this Court.

2. I represented defendant Eugene Castelle at the trial of this matter.

3. This Declaration is submitted pursuant to the Order to Answer of this Court (ECF
No. 769) directing that I respond to the allegations made by Mr. Castelle in his motion
brought under 28 U.S.C. § 2255 (ECF No. 767) ("Motion").

4. In his Motion, Castelle claims that he is entitled to relief because I provided
ineffective assistance of counsel during plea negotiations. Motion, ¶ 12(a).

5. Specifically, Castelle claims that he rejected the government's plea offer with
Guidelines of 8-14 months because of "Counsel's advice to Movant that he faced 33 to 41

months upon conviction after trial on Counts 1 and 3 ... (....) Pointedly, had counsel accurately advised movant [that the Guidelines would be 51-63 months], he would have accepted the government's 8 to 14 month plea offer."

6. Castelle's assertions are factually incorrect.

7. Whether the post-trial Guidelines were 33-41 months, 51-63 months, or some different numbers entirely, the fact is that Castelle wanted a trial, regardless.

8. Having just triumphed (with the undersigned as counsel) in a racketeering case in Brooklyn Supreme Court, which included among other charges the gambling case with co-defendant Anthony Greco, Castelle wanted a dismissal or trial in SDNY.

9. The excerpt of the sentence minutes, that are appended to the Motion as Exhibit A, confirms that fact:

My client wanted a trial. Notwithstanding what his attorney recommended [I had strongly recommended that he accept the government's 8-14 month plea offer], my client wanted a trial, and he got a trial.

Motion, Exhibit A, Tr. 20.

10. The "**estimate**" (33-41 months) that I provided to Castelle of what the Guidelines would be if he were convicted at trial of Counts 1 and 3, was a reasonable estimate.

11. The difference between that estimate, and the Guidelines found by this Court (51-63 months), arises from the fact that this Court increased the offense level finding that Castelle extorted his gambling partner (and former state court co-defendant) Anthony Greco.

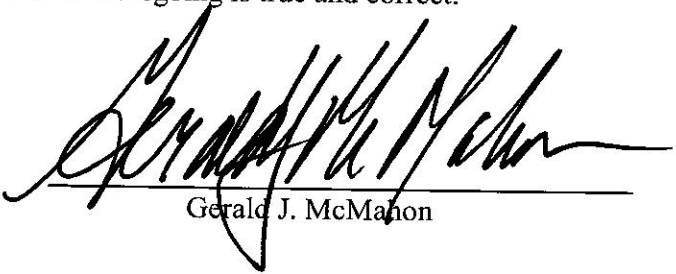
12. Since no jury found that Castelle extorted Greco, and since the SDNY prosecutors did not even charge Castelle with extorting Greco, it certainly was not unreasonable or

“wrong” (Motion, ¶ 12(a)(ii)) for counsel not to anticipate such an unwarranted – indeed, made-up – enhancement.

13. Finally, when I provided my estimate of the post-trial Guidelines to Castelle, I emphasized they were just an estimate, that the government was likely to ask for more, and that this Court could sentence him to anywhere between 0-20 years.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 9, 2021.



Gerald J. McMahon